

REMARKS

Claims 39, 42-51 and 53-62 are currently pending in the application. Claim 39 has been amended and new claim 62 has been added.

The Examiner is thanked for the courteous telephonic interview on November 27, 2006, at which time independent claim 39 (currently amended) and dependent claim 54 (previously presented) were discussed. As discussed in the telephonic interview, support for both the last amendment and the present amendment to claim 39 (currently amended) can be found on page 18, lines 10-12 and page 20, lines 1-3 of the instant specification. Applicant noted that none of the prior art references relied on by the Examiner to reject claims 39, 42-51 and 53-61 teaches or fairly suggests “generating an indication of when a patient is accepted as a new patient based in part on the net present value” and/or “generating an indication of when the patient’s requested appointment should be scheduled, based in part on the net present value.” Claim 54 (previously presented) has been rewritten in independent form as new claim 62, according to the Examiner’s suggestion. Additionally, Applicant noted that none of the prior art references relied on by the Examiner to reject claims 54-55 teaches or fairly suggests “wherein the software is configured to generate a recommended duration for a primary medical personnel to visit with the patient, the recommended duration being based at least in part upon the historical payment patterns of the TPP to the one or more medical service providers.”

Rejections under 35 U.S.C. §112

Claims 39, 42-51 and 53-61 have been rejected under 35 U.S.C. §112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Reconsideration is respectfully requested.

Claim 39 (currently amended) now recites “generating an indication of when a patient is accepted as a new patient based in part on the net present value, “as suggested by the Examiner. Further, “generating an indication of when the patient’s requested appointment should be scheduled, based in part on the net present value” finds support on page 20, lines 1-3 of the instant application. Applicant respectfully requests that the rejection of claims 39, 42-51 and 53-61 under the first paragraph of 35 U.S.C. §112 be withdrawn.

Rejections under 35 U.S.C. §103

Claims 39, 42-51 and 53-61 have been rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,456,983 to Keyes et al. (Keyes) in view of U.S. Patent No. 6,044,351 to Jones (Jones) and U.S. Patent No. 5,924,074 to Evans (Evans). Applicant respectfully traverses this rejection and requests reconsideration of the claims.

Keyes teaches a system and method for evaluating an offer made in relation to certain delinquent accounts, and more specifically to charge accounts. The system has two components, a historical portfolio module and an evaluation module that is operated by a computer. The historical portfolio module is used to retrieve an appropriate collection of historical data based upon analysis to be conducted on certain currently delinquent accounts, identify a basis for dividing the retrieved collection of historical data into a plurality of groups, and obtain information on the payment history for each group. The evaluation module can then process the information from the historical portfolio and make a recommendation on the disposition of the currently delinquent accounts being analyzed. A NPV is calculated and the preferred system calculates three separate NPV’s and compares them to determine the disposition of the delinquent accounts, i.e. whether to accept an offer or not. (See col. 4, line 42 - col. 5, line 10 and col. 9, line 39 - col. 10, line 19).

There is no disclosure anywhere in Keyes to “generating an indication of when a patient is accepted as a new patient based in part on the net present value;” as recited in independent claims 39 (currently amended) and 62 (new). Further, there is no disclosure of

“generating an indication of when the patient’s requested appointment should be scheduled, based in part on the net present value,” as recited in independent claims 39 (currently amended) and 62 (new). Still further, there is no disclosure in Keyes to “wherein the software is configured to generate a recommended duration for a primary medical personnel to visit with the patient, the recommended duration being based at least in part upon the historical payment patterns of the TPP to the one or more medical service providers,” as recited in dependent claim 54 (previously presented) and independent claim 62 (new).

Jones and Evans fail to overcome the deficiencies of the primary reference, Keyes. Jones is a computer software program that predicts the probability distribution of health care facility future minimum income for a total time interval consisting of equal sized time sub-intervals. This information provides physicians with information to be able to compare costs and worst case scenario future income. (See col. 2, lines 9-30).

Evans is a medical records system that is used to create and maintain patient data electronically. As part of the system health care provider has the ability to schedule an appointment using a point and click interface. There is no disclosure in either Jones or Evans as to net present value, let alone using net present value as a factor for accepting patients and/or scheduling appointments, as recited in independent claims 39 (currently amended) and 62 (new). Again, as with Keyes, there is no disclosure in either Jones or Evans to “wherein the software is configured to generate a recommended duration for a primary medical personnel to visit with the patient, the recommended duration being based at least in part upon the historical payment patterns of the TPP to the one or more medical service providers,” as recited in dependent claim 54 (previously presented) and independent claim 62 (new).

Claims 54-55 have been rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,456,983 to Keyes et al.(Keyes) in view of U.S. Patent No. 6,044,351 to Jones (Jones) and U.S. Patent No. 5,924,074 to Evans (Evans), as applied to claim 39, and

further in view of U.S. Patent No. 5,845,253 to Rensimer et al. (Rensimer). Applicant respectfully traverses this rejection and requests reconsideration of the claims.

Rensimer discloses a system and method for processing patient data. An objective measure of a physician's rendered level of care, as described by a clinical status code, is automatically generated. One of the data elements used in this determination is a time influence factor. The time influence factor refers to an adjustment to the Physician's Current Procedural Terminology Manual (CPT) standard amount of time associated with a clinical status code.

Rensimer fails to overcome the deficiencies of Keyes, Jones and Evans. As in all of the references relied on supra, there is no disclosure in Rensimer to "generating an indication of when a patient is accepted as a new patient based in part on the net present value;" as recited in independent claims 39 (currently amended), from which claim 54 (previously presented) depends, and 62 (new). Further, there is no disclosure of "generating an indication of when the patient's requested appointment should be scheduled, based in part on the net present value," as recited in independent claims 39 (currently amended), from which claim 54 (previously presented) depends, and 62 (new). Still further, there is no disclosure in Rensimer to a "third party payor ("TPP")," let alone to "wherein the software is configured to generate a recommended duration for a primary medical personnel to visit with the patient, the recommended duration being based at least in part upon the historical payment patterns of the TPP to the one or more medical service providers," as recited in dependent claim 54 (previously presented) and independent claim 62 (new). The time influence factor of Rensimer has nothing to do with cost.

It is difficult, if not impossible, to imagine how one skilled in the art in possession of all these references could conceive of the present invention absent hindsight reconstruction which was prohibited by the Supreme Court in *Diamond Rubber Co. v. Consolidated Rubber Tire Co.*, 220 U.S. 428 435-436 (1911). To find obviousness, "there must be some reason

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for the combination other than the hindsight gleaned from the invention itself.” *Interconnect Planning Corp. v. Feil*, 227 U.S.P.Q. 543, 551 (Fed. Cir. 1985). Stated in another way, “[I]t is impermissible to use the claimed invention as an instruction manual or ‘template’ to piece together the teachings of the prior art so that the claimed invention is rendered obvious.” *In re Fritch* 23 U.S.P.Q.2d 1780, 1784 (Fed. Cir. 1992).

Given the foregoing shortcomings of Keyes, Jones, Evans, and Rensimer, it is respectfully submitted that the references fail to disclose or suggest the invention of claims 39, 42-51 and 53-62. Accordingly, withdrawal of the rejections under 35 U.S.C. §112 and 35 U.S.C. §103(a) is respectfully requested.

It is respectfully submitted that the present claims describe a medical management system that meets the requirements of patentability. Applicant therefore respectfully requests that a timely Notice of Allowance be issued in this case.

Respectfully submitted,

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